

## **Court Questions:**

1. If someone receives a citation for “never obtained license” and a minor moving violation and they ask for traffic school to keep it off of their driving record, can clerks offer it?

**Answer:** If the local community offers a traffic school, a clerk can mention this fact if a defendant asks about the availability of traffic school. A clerk can also refer the defendant to the prosecuting attorney to obtain more information about traffic school. Also, if there has already been a process established for referring individuals to traffic school, clerks can inform defendants of that process.

2. What if someone asks the judge for traffic school for an accident and they have never had a driver’s license, can the judge order traffic school?

**Answer:** Traffic school can be ordered in this situation. The order could be a part of the conviction, guilty plea, or plea in abeyance. In the case of a plea in abeyance, there might be better ways of resolving such a case.

3. What do you do if someone is driving a friend’s car and they are cited for no proof of insurance. They later come in with their friend’s insurance information. It only has their friend’s name on it and not theirs. Does this work for proof of insurance or do they need to prove they were covered?

**Answer:** It is my understanding that insurance generally follows the vehicle. Therefore, if an individual shows that the vehicle was ensured, this should suffice as proof of insurance. Rule 4-704(4) states that “the clerk of the court is authorized to dismiss citations for violation of § 41-12a-303.2 if the defendant presents proof that valid insurance was in effect for the vehicle at the time the citation was issued.” Other provisions similarly state that insurance is tied to “the vehicle.”

4. Why is it okay to accept a copy of an insurance policy/declaration page/binder notice, but not the insurance card? Don’t they all show the same information?

**Answer:** Utah Code Ann. § 41-12a-401(1) states that “whenever proof of owners or operator’s security is required under this chapter it may be provided by filing . . . a certificate of insurance under § 41-12a-402 or 403. Section 402 states that “proof of owner’s or operator’s security may be furnished by filing with the department the written certificate of any insurer licensed in Utah certifying that there is in effect an insurance policy or combination of policies conforming to the Utah Code.” The Utah State Legislature has therefore declared what may constitute proof of insurance. The courts generally follow this declaration. However, it should be noted that a judge ultimately determines whether someone has proved that insurance was in effect. A judge could choose to accept other documents as proof of insurance.

5. How do civil rules and small claim rules differ?

**Answer:** The small claims rules apply only to small claims cases. The rules are extremely simplified and generally provide only for service of documents and appeals. The rules of civil procedure are much more detailed and explain the process for motions, parties, trials, and other process.

6. We see defendants by “camera” at jail now to save money on fuel bills from transporting. Sometimes the jail does not get our signed forms - waivers, enhancement, etc. back to us before prisoners are released. How does that work for a second, i.e. DUI, when the attorneys need to know defendant was advised on the first DUI offense?

**Answer:** It is of course important for a court to have all of the appropriate waivers on file. If there is a question about whether a DUI is a first or subsequent DUI, the case must be referred to a prosecuting attorney for screening to ensure the appropriate paper work is in order. If a defendant chooses to challenge a previous DUI conviction, the defendant has the burden of proof to show that the appropriate waivers were not obtained. If a defendant meets this burden of proof, a prosecutor can then contact the sheriff and obtain proof that the waivers were on file.

7. When a defendant comes in and pleads not guilty, does the attorney for the defendant become responsible for rights or the court?

**Answer:** The court is responsible to ensure that a defendant’s rights are reviewed and protected in all criminal cases.

8. Does a check ever get “too” old to collect through small claims?

**Answer:** A statute of limitations will prevent collection on checks that are “too old.” I believe that the statute of limitation would be six years on a check, but it is ultimately up to a defendant to raise the statute of limitations and have a judge determine which statute of limitation applies.

9. My daughter (17 years old) received a speeding ticket. I’ve never faced this situation before. What should we do? How do we explain the options without emphasizing any of them?

**Answer:** Under the Code of Judicial Conduct, a court employee is able to provide legal information to a family member. A court employee could not provide legal advice, but could explain court processes. A court employee should never make any contacts with another court or prosecuting attorney on behalf of a family member, unless the case is in the juvenile court and the juvenile court specifically requests the parent’s participation.

10. A clergyman came into court asking about a domestic violence case where two involved in the case were part of his congregation. He was asked to counsel with them together (he had been working with them individually), but did not know rules regarding the no contact order. Could he request a session with them? I asked the judge and he said those provisions needed to be specified in the no contact order by the judge. What are legal means to have clergy get that in

the protective order?

**Answer:** The only way that the provisions can get into the protective order is if one or both of the parties ask that the provisions be included in the order. The clergyman does not have standing to ask for those provisions to be included in the order. Because the order is generally public, the clergyman can look at the order, but only the parties can ask for changes.

11. A woman called on an outstanding warrant, crying that she did not want to go to jail. I looked up the case and a warrant was FTA on no proof of insurance. I told her she needed to come in to see the judge. In the meantime, the constable told me she was going to jail due to another warrant issued in another court for writing bad checks. She came in thinking she was appearing on the insurance issue and brought proof of insurance. She was held on the other warrant from other court and jailed. What is the clerk's obligation to inform defendant on other court's outstanding warrants? Do we say anything at all?

**Answer:** The clerk does not have an obligation to inform a defendant about other outstanding warrants. Because the constable had already put plans in place, it probably would be inappropriate for the clerk to say anything at all.

12. Has the law regarding non-law trained judges been passed by the state? If it passed, will the judge already in the position just be grand-fathered to remain in the position? Does this include counties where the Mayor appoints them? When does this go into effect? If they're appointed by the Mayor will it change as far as the Mayor appointing any judges? If its taken out of the Mayor's control, will they be put in as clerks?

**Answer:** The law on non-law trained judges has not changed. The law is in the Constitution and is unlikely to change.

13. Is it unethical for any prosecutor to visit or come near a judge before court or after court? Can they discuss any case prior to court?

**Answer:** The Code of Judicial Conduct prohibits judges from engaging in ex parte communications. It is unethical for a judge to discuss cases with a prosecutor outside of court and without the defendant present. If a defendant has been instructed to appear in court, and the defendant does not appear, the judge can handle the case without the defendant's presence. However, otherwise a judge cannot discuss a case with the prosecutor and should not even create the appearance that cases are being discussed.

14. What kind of hours are judges suppose to keep (if full-time) whether there is court or not?

**Answer:** The Rules of Judicial Administration create a presumption of how many

hours a judge is to spend in court. The hours depend on whether the court is a full-time or part-time court. However, because judges are essentially on the clock 24 hours a day, seven days a week, there is some flexibility in the hours that a judge is required to be physically at the courthouse.

15. What can be done if clerks lie to defendants to get them to court for a pretend hearing they set up with them and then have a bailiff waiting to arrest them when they appear at the window to check-in?

**Answer:** An employee in this situation should be terminated. If an employee lies to a defendant and sets-up a hearing, that is a serious matter affecting the integrity of the judicial system. The employee should be immediately terminated.

16. When a defendant sends in money to pay a fine by mail (or at the window) and has a late fee added, can you put the money in bail trust until he comes back to pay the rest? Or is it a bail forfeiture? What do you do to collect the late fee?

**Answer:** When a defendant sends in money to pay a fine by mail or at the window and the payment is not for the full amount, the court can place the money in trust and wait until the defendant pays the full amount including any increases in the bail amount. The court has some discretion on how to treat partial payments.

17. Will you please give your legal opinion on the new commercial drivers license amendments? Our judge's interpretation is not the same as what is being taught by the Driver's License Division.

**Answer:** The new commercial drivers license amendments create a circumstance under which licenses are to be suspended. Our office's interpretation of the new amendments is that, if a court amends charges so that they do not fall within the commercial drivers license statutes, those do not need to be reported to the commercial drivers license division.

18. In small claims, what do you do when a judgment is active and defendant provides proof of bankruptcy (discharge of debtor)? On what authority does the court have to take action, such as close the case, etc. Basically, what does the court do as it has not been satisfied?

**Answer:** When a court receives notice that a defendant has received a discharge in bankruptcy, the court should file the discharge in the case, note the discharge in the docket, and then administratively close the case. It is possible that the parties could ask for the case to be reopened, because sometimes a plaintiff's debt will not have been discharged in bankruptcy. If that is the case, the court can reopen the case on order of the judge.

19. Who can legally serve a small claims affidavit and order, supplemental order, garnishment, etc.? Does it have to be a certified private investigator and process server?

**Answer:** Under recent amendments to the small claims rules, a small claims affidavit and order can be served by a sheriff, constable or a process server, including a certified private investigator. A supp order and garnishment can be served by a sheriff, constable and private investigator.

20. How does a court resolve the apparent conflict that arises?
1. State law requires trust checks to be disbursed within 7 days.
  2. Funds for this may not actually be collected for 10-14 days after the money paid by the defendant was deposited and the check clears the bank.

**Answer:** Funds should be disbursed when the money is in hand - released from one bank to another.

21. Can the judge issue a bench warrant if a person does not appear for arraignment? Does the clerk issue an FTA? Is the signature on the ticket the same as signing a promise to appear?

**Answer:** If a defendant does not appear for an arraignment the judge can issue a bench warrant. If the person has failed to appear as directed by a citation, a separate charge of failure to appear can also be filed. A defendant is not required to sign a citation in order for the citation to be valid. If a defendant receives a citation, the defendant is put on notice of when the defendant must appear and the court can act accordingly.

22. I have a 1998 small claims that I just got a call on. They have a lien on their house, because of the lien here is the beauty of it . . . I can not find the docket or anything on the case. (This was before my time). What can I do to help this lady? She sold her house and cannot close because of this.

**Answer:** The first thing that the lady should do is try to contact the plaintiff to have the lien removed. If the lady is not successful in contacting the plaintiff, the rules of small claims procedure allow a judgment debtor to file a satisfaction of judgment along with proof that a debt has been paid. Therefore, if the woman can file proof that the judgment has been paid, the court can note on its docket that the judgment has been satisfied and the lien can be removed. This can occur even if the court does not have the original case file.

23. What documents do we send to district court when an appeal is filed?

**Answer:** The rules require all of the documents that have been filed up to the time

of appeal to be sent to the district court when an appeal is filed on a final judgment. If the appeal is of a post-judgment hearing, or another hearing such as a motion to suppress, the justice court only sends those documents related to that particular hearing. The court is not required to send documents that are filed with the justice court after the notice of appeal has been filed.